

**REMARKS**

Claims 1-14, 16-24, 25-27 and 29-32 are currently pending in the application. Applicants have cancelled claims 15, 25 and 28, amended claims 1-14, 16-24, 26-27 and 29, and added new claims 30-32. Applicants request reconsideration of the application in light of the following remarks.

**Change of Address**

The office action was sent to Schmeiser, Olsen & Watts, 18 E. University Drive, Suite 101, Mesa, AZ 85201. Applicants respectfully request that all future correspondence for this patent application be sent to:

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A signed revocation and change of power of attorney document will be sent shortly.

**Amendments To Specification**

Applicants hereby declare that the amendments to the Title and the Abstract are made for the purpose of clarifying the title of the claimed invention and conforming with the technical requirements of the Patent Office. These changes shall not be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

Applicants believe that these amendments conforms with the Examiner's request.

Specifically with regard to the Title amendment, Applicant has maintained the "marketing data collection" language in light of the clarifications made in the claim language further supporting that Title language.

**Rejections under 35 U.S.C. 112**

Claims 2-9, 11-26 and 29 stand rejected by the Examiner under 35 U.S.C. 112. Claims 15 and 25 were cancelled herein, thereby obviating the rejection of those claims. In accordance with the rejection, the remaining claims have been amended to comply with the Examiner's suggestions and are now believed to conform to Section 112. Applicants respectfully request that the rejection of claims 2-9, 11-14, 16-24, 26 and 29 under 35 U.S.C. 112 be withdrawn.

**Rejections under 35 U.S.C. 103**

To establish a *prima facie* case of obviousness under 35 U.S.C. 103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the

Applicants' disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP 2143.

**Claims 1-9 and 27-29**

Claims 1-9 and 27-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Holland et al. (U.S. Patent No. 5,166,499, hereinafter "Holland"). Dependent claim 28 was cancelled, thus obviating the rejection of that claim. Applicants respectfully traverse the rejection and request reconsideration of the remaining claims.

Holland teaches a system specifically designed for monitoring guard movement on a "tour" through a security route. Through the tour, the security guard has checkpoints at which the security guard scans a bar code to get a time stamp at each point as proof that the guard visited each checkpoint. The guard may also keypunch a message at a particular checkpoint. The system of Holland is specifically preprogrammed with a route or to confirm that each of a plurality of pre-programmed checkpoints have been visited and indicate which ones were not visited. *See* Holland, Abstract and Summary of the Invention, and col. 3, lines 55-59 and col. 4, line 11 to col. 5, line 4.

The most recent office action over-generalizes the teachings of Holland to assert as a basic assumption that Holland teaches use of its system to track "staff, users, workers, etc." and their "activities/tasks". It should be noted that this basic assumption is wrong because Holland does not appear to teach or suggest use of its system outside the tracking of security guard or "service individual" (i.e. cleaning crew?) tours through a building. Apart from

whether it would be obvious to apply Holland's teachings based upon other references, there is no specific or general teaching or suggestion in Holland that the system would be useful in tracking merchandisers to collect marketing data on specific products using such a system, or of how to implement such a system as recited in independent claims 1 and 27, as amended.

Independent claim 1, as amended, recites a "merchandiser tracking and marketing data collection system for collecting marketing data pertaining to a merchandiser at a store, the system comprising: a store-identifying identification code located at or near an entrance to the store; a plurality of different product display identification codes located throughout the store; a portable code reader . . .; wherein the portable code reader further receives the store-identifying identification code in association with an arrival time . . . receives the plurality of different product display identification codes each in association with marketing data entered by the merchandiser . . . and receives the store-identifying identification code in association with a departure time . . . ."

Holland, even in light of the job description of a merchandiser, does not teach or suggest a system for collecting marketing data or tracking merchandisers, does not teach or suggest a store-identifying identification code and separate product display identification codes, and does not teach or suggest receiving a plurality of product display identification codes in association with marketing data entered by a merchandiser as recited in independent claim 1. The checkpoint codes of Holland are only similar to a store-identifying

identification code in that it is a code that relates to something that is scanned to confirm a visit at the checkpoint. However, Holland does not teach or suggest separate product display identification codes associated with a store-identifying identification code. Furthermore, the security messages entered by the guard at a checkpoint are not marketing data. While it may be possible to modify the hand-held unit of Holland to include sufficient programming to function as recited in claim 1, though Applicants are not convinced that it would be, Holland does not teach or suggest modification of the Holland device to include all of the elements of claim 1.

The most recent Office Action quotes Applicants' specification to indicate that the job description for a merchandiser is known. *See* p. 6. The Office Action then asserts that it would be obvious from the description of Holland to monitor a person's activity, location and time as taught by Holland while collecting data pertaining to merchandisers to accurately monitor the merchandiser activities. Holland does not teach or suggest all of the components of the system recited in claim 1 and provides no teaching or suggestion for applying its technology to merchandiser tracking and marketing information collection with a store identification code and a product display identification code. Realization of a desire to simply track a merchandiser's activities would not have resulted in use of the Holland system because the type of data collected by merchandisers is typically much more complicated than a simple, short keypunched text message as would be entered in Holland, and one of ordinary skill in the art would not have looked to security guard tracking to determine how to track marketing data and merchandisers. Much more is being done in

claim 1 than simply tracking a route taken by a security guard. Even the combination of the teachings and suggestions of Holland with Applicant's background specification and the motivation to track the route of a merchandiser (though Applicants do not believe Holland would be applied to a merchandiser), does not teach or suggest all of the elements of independent claim 1.

Dependent claims 2-9 are allowable over Holland, among other reasons, for depending from independent claim 1. Additionally, dependent claim 9 recites product display identification codes that include a bar code on a product on display at the product display. As expressed above, Holland is related to tracking a security guard route through pre-identified checkpoints. Checking product bar codes in a store and associating those bar codes with a store identification code received when the merchandiser entered the store is not taught or suggested by Holland, even in combination with applicant's background section.

Independent claim 27, as amended, recites a "merchandiser tracking and market data collection method for collecting marketing data pertaining to a merchandiser at a store, the method comprising" "determining a predetermined region about a store; recording a position of the portable code reader when it enters the predetermined region and associating that position with a store-identifying identification code . . . ; receiving a plurality of product display identification codes in association with marketing data collected by the merchandiser

through the portable code reader at the store . . .; associating the marketing data collected with the store-identifying identification code . . . .”

Holland, does not teach or suggest a method for collecting marketing data or tracking merchandisers, does not teach or suggest determining a region about a store, associating a position with a store-identifying identification code, receiving a plurality of product display identification codes in association with marketing data collected by a merchandiser, or associating the marketing data collected with the store-identifying identification code as recited by independent claim 27. The checkpoint codes of Holland are only similar to a store-identifying identification code in that it is a code that relates to a predefined location. However, Holland does not teach or suggest separate product display identification codes associated with a store-identifying identification code. Furthermore, the security messages entered by the guard at a checkpoint are not marketing data. While it may be possible to modify the system of Holland to include sufficient programming to perform the method recited in claim 27, though Applicants are not convinced that it would be, Holland does not teach or suggest modification of the Holland device to include all of the elements of claim 27.

The most recent Office Action cites Applicants’ specification to indicate that the job description for a merchandiser is known. *See* p. 12. The Office Action then asserts that it would be obvious from the description of Holland to monitor a person’s activity, location and time as taught by Holland while collecting data pertaining to merchandisers to

accurately monitor the merchandiser activities. Holland does not teach or suggest all of the steps of the method recited in claim 27, as amended, and provides no teaching or suggestion for applying Holland's technology to a method for tracking merchandisers while they collect marketing information with a store identification code and a product display identification code. Realization of a desire to simply track a merchandiser's activities would not have resulted in use of the Holland system because the type of data collected by merchandisers is typically much more complicated than a simple, short keypunched text message as would be entered in Holland and one of ordinary skill in the art would not have looked to security guard tracking to determine how to track marketing data. Much more is being done in claim 1 than simply tracking a route taken by a security guard. Even the combination of the teachings and suggestions of Holland with Applicant's background specification and the motivation to track the route of a merchandiser (though Applicants do not believe Holland would be applied to a merchandiser), does not teach or suggest all of the steps of method claim 27 or make the steps obvious. Dependent claim 29 is allowable over Holland, among other reasons, for depending from independent claim 27.

Applicants respectfully request that the obviousness rejections of claims 1-9, 27 and 29 be withdrawn.

**Claims 10-26**

Claims 10-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Holland as applied to claims 1-9 and 27-29 in further view of Small et al. (U.S. Patent No.



5,642,303, hereinafter “Small”). Applicants respectfully traverse this rejection and request reconsideration of the claims.

Independent claim 10 recites a “merchandiser tracking and marketing data collection system for collecting marketing data pertaining to a merchandiser at a store” the system comprising a “transmitter transmitting a store-identifying identification code; a receiver associated with a portable code reader carried by the merchandiser, the receiver receiving the transmitted store-identifying identification code when the merchandiser arrives at the store . . .; a plurality of different product display identification codes located throughout the store . . . .”

As discussed above with respect to independent claim 1, Holland, even in combination with Applicant’s background section (if that combination would have even been obvious), does not teach or suggest a system that is applicable to merchandiser tracking and market data collection and a it would not have been obvious to apply a system for security guard tour monitoring to market data collection. As also discussed, the Holland combination does not teach a system that includes both a store-identifying identification code and a plurality of product display identification codes or associates marketing data with each of the product display identification codes of a store. The Office Action asserts, starting on page 16, that it would have been obvious to add a GPS-like beacon to the Holland system to determine the security guard’s location on the tour rather than scanning bar codes. *See* p. 17.

Even if it were obvious to combine the GPS beacon system of Small with the security guard tour system of Holland, and Applicants do not admit that it would have been, the combination of Small with the previous application of Holland would not include every element of independent claim 10, as amended. Small does not teach or suggest the elements addressed above that are missing from Holland and does not provide any teaching or suggestion to modify the Holland system for application to merchandisers, marketing data, a store identification code separate from product display identification codes, or a system for tracking the merchandisers and collecting the marketing data as recited by independent claim 10.

Dependent claims 11-14, 16-24 and 26 are each allowable over the combination of Holland and Small, among other reasons, for depending from independent claim 10. Many of the reasons these claims are independently allowable over the combination relate to the inclusion of components specifically tied to merchandising systems that are not taught or suggested by the combination and are not components typical in a conventional merchandiser job description. For example, independent claim 14 recites use of a product bar code as a product display identification code. Use of the product bar code as the display identification code simplifies bar code placement requirements and quickly adapts for situations where a merchandiser is coming into a store where the store staff has reorganized products on the shelves or within the store. The products may be located in a different part of the store, but the merchandiser can still check the product display and indicate for that

store the change without re-labeling the displays with a new bar code or spending time moving displays to new locations to match the products located there.

Dependent claim 26 recites a system that includes a plurality of stores that each includes a transmitter that transmits a different store-identifying identification code and each store has the plurality of different product display identification codes. To meet this combination of elements from combining the Holland and Small systems, one would need to make very specific combinations of components that are not suggested for combination and would likely not result in a system that meets these elements. For example, if Holland and Small were combined, the security guard would no longer need to scan bar codes (the beacon replacing the bar codes) and could potentially take notes in each region as the security guard made the rounds. There would not, however, be a need for a system that distinguishes different stores (unique identifiers) within either Holland, Small or the combination, and then uses product display identification codes from one store in another store as well (non-unique identifiers), distinguished by the store-identifying identification code that is received when the merchandiser enters the store.

Applicants respectfully request that the obviousness rejections of claims 10-14 and 16-24 and 26 be withdrawn.

**Regarding Doctrine of Equivalents**

Applicants hereby declare that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

**CONCLUSION**

Applicants respectfully request that a timely Notice of Allowance be issued in this case. If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 50-3545. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

Date: October 19, 2005

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